

No. 501

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CHARLES ELMORE GROPLE  
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IN THE  
**SUPREME COURT OF THE UNITED STATES.**

OCTOBER TERM, 1940.

CAP ANDREW TILLES,	} Petitioner,
v.	
COMMISSIONER OF INTERNAL REVENUE,	

**PETITION FOR WRIT OF CERTIORARI**

To the Circuit Court of Appeals for the Eighth Circuit  
and

**BRIEF IN SUPPORT OF PETITION.**

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CAP ANDREW TILLES,		Petitioner,
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COMMISSIONER OF INTERNAL REVENUE,		Respondent.

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**PETITION FOR WRIT OF CERTIORARI**

**To the Circuit Court of Appeals for the Eighth Circuit.**

Comes now Cap Andrew Tilles and prays the Court that it issue its writ of certiorari to review the judgment of the Circuit Court of Appeals for the Eighth Circuit in Cause No. 11,490, being a petition to review the decision of the United States Board of Tax Appeals, in which the Eighth Circuit inadvertently failed to correctly apply the principles involved in *Douglas v. Willcuts*, 296 U. S. 1.

The judgment of the Circuit Court of Appeals was entered on July 24, 1940 (Record p. 80).

Petition for rehearing was denied on September 4, 1940 (Record p. 91).

Stay of mandate for thirty days to file petition for certiorari granted September 17, 1940 (Record p. 93).

The opinion of the Court of Appeals (Record p. 63).

### STATEMENT OF THE CASE.

In 1908 Mrs. Tilles sued petitioner, Mr. C. A. Tilles, of the City of St. Louis, in the Circuit Court of the City of St. Louis, State of Missouri, for divorce.

While the suit was pending, as a result of negotiations between the respective parties and **their lawyers**, a pre-divorce settlement was executed. Under this agreement certain securities which Mr. Tilles had given his wife were to be transferred to him.

Subsequently Mrs. Tilles **dismissed** her petition and the parties resumed their marital relations. The predivorce settlement was **abandoned** and Mrs. Tilles **retained** title to her securities.

**In 1909 Mr. Tilles filed divorce proceedings against Mrs. Tilles** in the Circuit Court of the City of St. Louis. His wife by resuming marital relations with him had condoned all of petitioner's alleged offenses set out in Mrs. Tilles' petition for divorce filed in 1908, and **she had therefore no ground for cross bill against Mr. Tilles.**

After Mr. Tilles filed his suit he informed Mrs. Tilles that he was willing to provide for her future welfare and maintenance, **although he was the one suing for divorce.** Accordingly, Mr. Tilles and his wife, without consulting anyone, took the old agreement, altering it only in so far as was necessary to make it appear that he was the party getting the divorce, and then they signed it. At the time this agreement was entered into, and as a consideration for its execution, Mrs. Tilles **transferred title** to Mr. Tilles of the securities above mentioned.

The agreement (Trans. pp. 43 and 44) is appended at the end of this brief.

The instrument was **conditioned upon**, Mr. Tilles, securing a divorce, from Mrs. Tilles; and since under the Missouri law, in such an event, no obligation was imposed upon Mr. Tilles, to support his wife, the agreement, **on its face** was simply, a voluntary declaration, as what he would do, for Mrs. Tilles in the future. **On the face of the instrument** no consideration moved from the former Mrs. Tilles to Mr. Tilles. **She didn't agree to do anything or refrain from doing anything.**

The validity of the agreement, as a binding obligation upon Mr. Tilles, **rests solely** upon the transfer by Mrs. Tilles of her securities to Mr. Tilles; a financial transaction.

On June 10, 1909, the Circuit Court of the City of St. Louis granted Mr. Tilles an **absolute** decree of divorce. The agreement of May 12, 1909, **was not a part of the decree**, as the Circuit Court **lacked jurisdiction** to make any such order (*McIntyre v. McIntyre*, 80 Mo. 470), because under the statutes of Missouri a divorced wife was not entitled to any alimony (Section 1358, R. S. Mo. 1929; Section 2378, R. S. Mo. 1909) nor dower (Section 331, R. S. Mo. 1929; Section 359, R. S. Mo. 1909).

After the decree petitioner proceeded to carry out the agreement of May 12, 1909, and has done so continuously ever since, paying to his former wife \$400 monthly, or \$4,800 annually, which was at the rate of 4.8 per cent on \$100,000.00.

**Within one week after Mr. Tilles secured his divorce the former Mrs. Tilles remarried** (*Trans p. 38*). Thereafter she was not entitled to any support from Mr. Tilles, even if she had secured the divorce. *Nelson v. Nelson*, 282 Mo. 412.

If the predivorce agreement of May 12, 1909, was predicated upon Mr. Tilles' obligation imposed upon him by law to support Mrs. Tilles, then upon Mrs. Tilles' remarriage, there was a failure of consideration under the agreement,

because under the authority just cited there was no further obligation imposed by law of the State of Missouri upon Mr. Tilles to support his former wife.

The record shows that from time to time Mr. Tilles, whenever the securities deposited under the agreement of May 12, 1909, became depreciated in value, replaced them with good or better securities or collateral.

The record shows [Trans. p. 40, par. (e)] that the former Mrs. Tilles returned the annual payments of \$4,800 as her income and paid taxes on the same, the Commissioner of Internal Revenue having ruled (Trans. p. 54) that they were not chargeable against Mr. Tilles as income.

In 1931 and 1932 the Commissioner of Internal Revenue reversed the previous ruling and held that the \$4,800 annual payments were not deductible (top of p. 18 of Trans. and last par., p. 19, of Trans.). From this ruling petitioner took an appeal to the Board of Tax Appeals, and on September 16, 1938, the Board of Tax Appeals promulgated its opinion sustaining the Commissioner (Trans. p. 25). Under order of redetermination (Trans. p. 30) a deficiency was assessed against taxpayer for the year 1931 of \$75.18; none for 1932.

The Court of Appeals affirmed the ruling of the Board of Tax Appeals, holding that upon the facts set forth the rule, stated, in *Douglas v. Willcuts*, applied.

### **QUESTION PRESENTED.**

Whether the \$400 monthly payment made under the agreement of May 12, 1909, constitutes income, taxable to petitioner or his former wife in the years 1931 and 1932, depends upon the following question:

Whether the agreement of May 12, 1909, constitutes a continuing obligation on petitioner imposed upon him **by law**, that is, his marital duty to support his wife, which could have been altered, amended or enforced by the Cir-

cuit Court of the City of St. Louis in 1931 and 1932 under its divorce jurisdiction, or whether the agreement constituted a **contractual** obligation between petitioner and his former wife, founded on a valuable consideration as distinguished from a marital consideration, being predicated solely upon her transfer to him of the securities owned by her and not resting upon petitioner's obligation to support her, growing out of his marital relations.

If the contract be the former, then *Douglas v. Willcuts* applies; if not, then Section 23 of the Revenue Act of 1929 (U. S. C. A., Title 26, Sec. 23, page 125) and Subsection (b) of Section 23 of the Revenue Act of 1932 (U. S. C. A., Title 26, Sec. 23, page 125) do.

### **REASON FOR THE ISSUANCE OF THE WRIT.**

The decision of the Circuit Court of Appeals fails to correctly apply the principles in *Douglas v. Willcuts*, 296 U. S. 1.

Respectfully submitted,

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